

DETAILED ACTION

Introduction

1. Applicant requested reconsideration (see attached Interview Summary) of the claim rejections issued in the Office Action mailed September 30, 2009 on the grounds that the secondary references of Choi (U.S. 2006/0226110) and Eckstrum (2005/0150895) are not prior art since they were filed after the filing of priority document PCT/NL04/00024.
2. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.
3. The following is a NON-FINAL action.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 22-26, 28, 30-32, 36 and 39-42 are rejected under 35 U.S.C. 102(b) as being anticipated by McHenry et al. (U.S. 6,626,314). McHenry et al. teach a device for sealing food product containers, shown in figures 17-20, comprising a sealing element 22 adapted to engage on a wall 18 of a food product container around a wall opening 20 arranged in the wall. The operating element is element 24 and is adapted to co-act with the sealing element for displacing the sealing element between an opened position, shown in figure 20, leaving the wall opening clear and a closed position, shown in figure 17, sealing the wall opening. The operating element is provided with coupling means which is the radially outer portion of the operating element which fits over and inside the rim of the container, for coupling to

Art Unit: 3781

the food product container. The relative orientation of the sealing element and the operating element can be changed, as shown in figures 18 and 20. The operating element pulls the sealing element upwardly to the closed position to engage under bias on the wall for substantially medium-tight sealing of the food product container. The operating element is rotated upwardly, out of the plane of the container lid.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over McHenry et al. (U.S. 6,626,314) in view of Brandl (U.S. 3,313,445). McHenry et al. teach the claimed invention except for the seal on the wall of the food product. McHenry et al. teach the use of a seal 28, however, the seal is located on the sealing element. Brandl teaches that it is known to provide a container with a seal around the opening (see element figures 1, 5 and 9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of McHenry et al. with the seal being on the container instead of the sealing element, as taught by Brandl, in order to provide a secure engagement with the sealing element even when there are imperfections in the container wall surrounding the opening.

8. Claims 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over McHenry et al. (U.S. 6,626,314). The embodiment in figures 21-23 of McHenry et al. teach the claimed invention except for the operating element receiving a pin. McHenry et al. teach that the pin projects from the operating element and the pin receiving opening is at lead line 32, in figure 21 and located on an intermediate element. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of McHenry et al. with pin extending from below the lid and the pin receiving

Art Unit: 3781

opening extending from the operating element, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

9. Claims 33 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over McHenry et al. (U.S. 6,626,314) in view of Dibdin et al. (U.S. 2005/0115977). McHenry et al. teach the claimed invention except for the opening of the operating element. Dibdin et al. teach that it is known to provide a operating element with openings (see elements 119 and 117). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of McHenry et al. with the operating element having openings, as taught by Dibdin et al., in order to better control dispensing and venting.

Allowable Subject Matter

10. Claims 29 and 37 are allowed.

11. Claims 34 and 38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

12. **THIS ACTION IS MADE NON-FINAL.**

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIKI M. ELOSHWAY whose telephone number is (571)272-4538. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3781

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Niki M. Eloshway/
Niki M. Eloshway
Examiner
Art Unit 3781

nmc